

IN THE
United States
Court of Appeals
FOR THE NINTH CIRCUIT

BILL CORBETT,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION

HONORABLE GEORGE H. BOLDT, *Judge*

BRIEF OF APPELLEE

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QUESTIONS PRESENTED

1. Whether the defendant can admit to the omission, alteration and removal of thousands of dollars of income from his records through an elaborate system of concealment and escape responsibility

by an unsubstantiated claim that he acted in compliance with O.P.A. Regulations.

2. Whether the defendant can escape responsibility for the evasion of taxes upon thousands of dollars of concealed income by the unsubstantiated claim that such income was returned to the books, when he deposited to personal bank accounts other than the business accounts, over \$96,000 in currency.

3. Was the defendant prejudiced by the testimony of an agent, given without objection, from his work papers of his work upon records either introduced in evidence or present in Court during the trial.

4. Was the defendant prejudiced by the testimony of an agent of his computations of corrected net income of the defendant and the tax due thereon, made from the exhibits and testimony introduced into evidence.

5. Was the defendant prejudiced by introduction of financial statements given to his banks during the indictment period, which were contradictory to statements given to the Government agents during the investigation.

6. Was the defendant prejudiced by cross-examination upon transactions prior and subsequent to the indictment period that would both impeach his testi-

mony given upon direct examination concerning these periods, and would directly bear upon his intent to evade taxes and upon his knowledge of his true financial position and tax returns filed.

7. Was the defendant prejudiced by denial of the use of exhibits in the course of the trial when by agreement desired exhibits were delivered to the office of defense counsel for use during the week-end and no objection was made thereto.

COUNTER STATEMENT OF THE CASE

The defendant Bill Corbett, a Seattle hotel operator, while reporting a net loss of \$17,000 during the indictment years of 1945 through 1948, deposited in personal accounts other than the hotel account, over \$96,000 in currency in the years 1945, 1946 and 1947. During this time he also expanded from the original hotel to vast holdings, including two motels and two inns, and variously estimated to be of a value of one to two and one-half million dollars as of 1948.

The defendant was indicted upon four counts of tax evasion for the years 1945 through 1948. The Court dismissed Count 4 pertaining to the year 1948. The jury convicted him upon Counts 1 and 2 pertaining to 1945 and 1946, and acquitted him upon Count 3, for the year 1947.

The defendant admitted in the trial that he removed or caused to be removed items of income from his records but claimed that this was done to comply with O.P.A. regulations and that this income was returned to the books. He could find no evidence in his records to substantiate this claim in the amounts shown to have been removed.

Through all of his operations he was in complete control of his employees and of the records they maintained. While disclaiming any knowledge of books or bookkeeping, his system gave him complete supervision of the hotel activities and knowledge of all receipts properly recorded and of the receipts which regularly came into his hands and went unreported.

The Government proved through his employees and his records that he reduced his reported income through the use of allowances falsely claimed to have been given to guests, through duplicate invoices for bills already paid which he turned in for cash or checks of the hotel for himself, through room rentals omitted from the records and turned in to the defendant by an envelope system, and by checks issued to an employee, Loretta Newton, and reported upon her income tax return, which checks were in fact returned to the defendant.

While admitting the use of false allowances which

were shown by a Government expert who had reproduced certain ink eradicated entries upon the hotel records, Mr. Corbett denied or alibied the other charges. In each instance he accused the several employees and associates of testifying falsely because of grievances with them (R. 1009-1019). However, his own demeanor upon the stand, his evasive answers and his conflicting explanations all contributed to the jury's determination that he, not they, testified falsely.

The defendant, in 1944, acquired the stock to the corporation owning the Claremont Hotel, 150 unit building, in Seattle, Washington. He operated the hotel through the corporation until July 1, 1945, when he began operation as a sole proprietorship which he continued until its subsequent sale (R. 863, 934). In 1947 he built two motels on the Seattle-Tacoma highway and bought two inns in Oregon (R. 934-936).

The defendant continued the bookkeeping system installed when he acquired the Claremont Hotel and retained the same bookkeeper, Mrs. Beatrice Murta. The system consisted of cash sheets and guest ledger sheets maintained by the desk clerks and regular books maintained by Mrs. Murta. Three shifts of desk clerks were employed who were to enter all cash receipts upon the cash sheets and all payments by guests upon the guest ledger sheets. A daily transcript of these re-

ceipts and of all charges to guests was made by the night clerk. This daily transcript, the cash sheets and the daily receipts were then checked by the bookkeeper and the contents recorded upon her records.

A cash drawer at the desk was used by the respective clerks to keep all of the hotel receipts, and its contents were balanced with the cash sheet by each change of shifts. The daily receipts were tabulated by the swing shift clerk and given to Murta for deposit in the hotel company bank account.

Guest ledger sheets were maintained in duplicate by the clerks and daily charges were entered by the desk clerks as well as all payments. When a guest checked out, his payment was supposed to be recorded, the original white copy stamped paid and initialed by the clerk receiving payment, and this white copy given to the guest as a receipt. The yellow duplicate was retained as a hotel record.

The system was adequate and the hotel forms contained appropriate descriptive columns for all entries, including columns for allowances to be given guests.

However, falsification of the records came through misuse of allowances taken or directed by Corbett. Corbett installed an additional system of "allowance slips." These slips were prepared by the

clerks from the guest ledger sheets and were sent each morning to the bookkeeper with the cash sheet and transcript. She then gave them to Corbett who personally approved each one and noted a "reason" for the "allowance." They were then returned to the bookkeeper who entered them in an allowance journal.

The clerks testified that these "allowances" were entered by them at Corbett's direction. They stated that after a guest had paid his bill, Corbett either removed the entry recording such payment from the cash sheet by the use of ink eradicator or directed them to do so (R. 149, 150, 352-354). He would then remove cash from the cash drawer in the amount of the entry removed from the cash sheet. The cash sheet and cash drawer then balanced. Corbett or the clerks would then make a second entry over the entry removed by ink eradicator (R. 168).

In addition, Corbett would direct the clerks to make an entry upon the yellow duplicate guest ledger sheet changing the original carbon entry in the cash column to an entry in the allowance column. *This allowance would be for the entire amount of the bill.* An allowance slip in the same amount would be prepared by the clerk, approved by Corbett and returned to Murta. Her entries of these slips in the allowance journal reduced the income reported by the hotel rec-

ords. These allowances totaled \$22,400 in 1945 and \$28,000 in 1946.

The system varied to some extent in the instances Corbett, through an intercommunication system controlled from the balcony or being personally present, would direct the clerks to omit the entries from the cash sheets (R. 365). Then ink eradicator was of course not required. On other occasions entire cash sheets were rewritten at Corbett's direction when some items would be omitted (R. 348). On other occasions entries to be removed were selected by Corbett and marked by a pencil check mark. The clerks then removed these entries from the cash sheets, changed the guest ledger sheets, and removed a like amount of cash from the cash drawer which they put in an envelope marked "B.C." for Mr. Corbett (R. 353-354). This practice continued at Corbett's direction while he was on vacation, with the removal of \$50 to \$60 payments (R. 366-367). It also varied when no entry would be made upon the duplicate guest ledger sheet at all or the entry would be made directly to the allowance column (R. 364).

The system did not vary, however, in certain details—Corbett always received the money removed from the cash drawer, Corbett always checked each allowance slip, and cash "allowance" for this cash payment received and removed from the drawer, sub-

sequently reduced the hotel income reported upon the tax returns of Mr. Corbett. Corbett controlled the removal of these allowances but insured that no one else could use the "ink eradicator-allowance slips" method to the detriment of Mr. Corbett. He could always check the money he received against these allowance slips.

The clerks, Beatrice Morgan, Irene Krueger, Loretta Newton, Alfred Wright and Harold Vowles, all testified they made no entries returning any of these allowances to the cash sheets.

Prior to trial, Beatrice Morgan, Irene Krueger and Loretta Newton went through those guest ledger sheets and allowance slips of the hotel that were in the possession of the Internal Revenue Agents. These clerks segregated those that they could identify by entries in their own handwriting. This identification was made of erased entries in the cash column of the guest ledger sheets that were still legible, of entries in the allowance column, by allowance slips written by them, or of initials upon checks received from guests in payment of bills subsequently removed as an allowance. These segregated records were Exhibits 13, 14, 15 and 51 (R. 157, 210, 356 and 464).

Segregation of ledger sheets and allowance slips were also made by Mr. McCarthy, an Internal Revenue

agent, of those instances where an entire bill was given as an allowance, where the cash entry was erased or no entry at all made, and where allowances corresponded in amount to checks deposited in bank accounts the following day (R. 748-750). These, in addition to exhibits also identified by other witnesses, were Exhibits 16, 72A, 72B, 72C, 73A, 73B and 73C (R. 108, 753-757).

The Government also called twenty-one guests. Each testified he had stayed at the Claremont Hotel, had paid his bill in full upon departure and had received no allowance upon his bill of any kind. In each instance, the entire amount of the bill had been claimed as an allowance for which the duplicate ledger sheet had been altered, an allowance slip made out and the allowance taken in the allowance journal (Exhibit 17). Original ledger sheets recording cash payments were produced in some instances, and compared to the altered duplicate hotel record. Other guests produced checks or check stubs proving payment (R. 484-540). Still other guests mailed similar records of payments to McCarthy (R. 106-108) which were identified by the clerks who had initialed the checks or ledger sheets (R. 165, 356, 359, 360, 361, 362).

Prior to taking a trip in 1945, Corbett instructed clerk Newton she was to be in charge of the hotel, and

that she was to run the \$100 store rental through as an allowance [there were five stores in the hotel rented to commercial tenants (R. 39)], continue allowances and put money in safe (R. 392) and if anything happened to the Corbetts, Newton was to read a book in Corbett's desk for instructions concerning money Corbett's oldest son Frank was to divide among the four children and "*no one need know any more about it.*" She recorded these instructions in her notebook, Exhibit 48 (R. 392-393).

Newton testified on one occasion Corbett called her into his office and after mentioning allowances, told her she was just as guilty as he was (R. 395). Corbett testified he was talking about O.P.A. regulations when he had this conversation with Newton (R. 918, 1014).

Newton testified she kept a record of these allowances she made until she consulted an attorney who advised her that she need not worry since she was acting on orders of Corbett (Exhibit 45, 46; R. 455-456).

Among allowances given were an allowance for store rental of \$100 marked "cash short" (Exhibit 49, R. 454), allowances on more than one occasion to the same guest (R. 450, 470, 476), duplicate allowances for the same date for the same guest (R. 1031) and days when there would be six allowances totaling

\$200.74, and nine allowances totaling \$345 taken and the cash sheets would only report two receipts totaling \$38.00 and \$15.00 (R. 459-461).

One guest received a \$7.00 refund on February 21, 1946, after the entire bill had been shown as an allowance by Mr. Corbett (Exhibit 16). The records then showed the guest was *paid \$7.00 for staying at the hotel* (R. 291-294). To this, on cross-examination, Corbett concluded she must have had a fancied grievance (R. 1031).

Arthur Bauman, a Government expert, introduced 11 photographs he had made of ink-eradicated entries on the cash sheets (Exhibits 11, 12 and 13) that he had reproduced by random selection (R. 541-547). In each instance, the removed item was taken upon the allowance journal, and generally a small item entered over the eradicated space. Some sheets showed two or three eradications. The total of these 19 ink-eradicated receipts was \$963.47 over which receipts of 15c, 18c, 42c and \$1.00 had been made. These reproductions were so convincing that when trial counsel at cross-examination offered to reproduce any eradicated entry on the cash sheets that Corbett might question as to having been claimed as an allowance, Mr. Corbett said (R. 1034):

“A. No. You have got—you had twenty people

here. I believe in less than a week if you'd let me help you we would have went down and got nearly all that was there."

Special Agent Holtberg computed these allowances from Exhibits 13, 14, 15, 16, 17, 46, 49, 51, 55, 60, 72 and 73 and they totaled \$14,595.84 in 1945 and \$17,542.83 in 1946. These amounts were included by Holtberg in his computation of the corrected net income of Mr. Corbett for the years 1945 and 1946 (Exhibit 74, R. 797-799).

An additional source of unreported income was the rentals by the night clerk, Vowles, which were not entered upon the cash sheets at Corbett's instructions. Vowles testified he rented from 1 to 17 rooms per night on a one night basis which he did not enter on the cash sheet. He put the money and a record of the rentals in an envelope marked "B.C." for Corbett. This was done at Corbett's instructions. The rentals averaged 5 to 6 rooms per night and from \$20.00 to \$30.00 in receipts and was followed nightly from February, 1945, until November 1, 1947, except for the period of a vacation taken by Corbett in 1945 and again in 1946. He also rented 15 cots on the hotel mezzanine to servicemen for \$1.00 per night which were also omitted from the cash sheets and given via envelope to Corbett (R. 605-610).

Vowles stated that he kept a record at home of

these rentals which he subsequently threw away. He remembered that this record showed over \$7,200, but could not remember specific dates or amounts (R. 612-613).

The other clerks, Morgan, Wright and Newton, testified they found cash overages or envelopes in the drawer at the beginning of the morning shift (R. 394, 581, 152). They also noted cots were rented but the receipts were not reported, and that registration cards marked "paid" were handled differently by Vowles for rentals not shown on the cash sheets, for rooms they had been instructed by Corbett to save for rental by the night clerk (R. 394, 155, 576, 581). Newton testified she saw Corbett burn registration cards and that she had burned registration cards at his direction (R. 378).

Revenue Agent Marx computed these rentals from Vowles' testimony at the minimum night's average of \$20 for the period Corbett operated the hotel as sole owner in 1945, 1946 and the period in 1947 that Vowles followed this practice (R. 613, 633). Holtberg included this computation in his computation of unreported income (Exhibit 74) in the amounts of \$3,680 in 1945, \$7,300 in 1946 and \$6,080 in 1947 (R. 796-804).

Newton testified that within one month of being

employed as a clerk at the hotel, Corbett advised her she was a vice-president of the hotel corporation. She attended meetings where she voted on such issues as raising Corbett's salary. For this she was paid \$368.80 from which \$73.60 was withheld as tax in 1945. She signed all of the checks over to Corbett and received no proceeds from them. She reported these amounts, however, upon her income tax return. She received a tax refund that year which may have included some of the money withheld from the checks (R. 382-384). Holtberg included \$295.04 upon his computation of Exhibit 74.

Holtberg computed additional income for Mr. Corbett for the years 1945, 1946 and 1947 (Exhibit 74), from these allowances, night rentals and Newton's salary checks. In 1947 there was also income not reported from the Corbett Motel.

Gunder Birkeland, a man who loaned Corbett money, produced a paper received from Corbett which reflected income from the Corbett Motel operation for June, July, August and September, of 1947. This income was \$15,105.00, less expenses of \$2,580 for a net income of \$12,525.00 (Exhibit 65, R. 644-650). Marx computed additional income from Exhibit 65 and from the hotel journal (Exhibit 9) in the amount of \$12,337.43 (R. 778). This was included in Holtberg's computations for the year 1947 (Exhibit 74).

Corbett denied giving Birkeland this paper (R. 938-940, 1042) and stated he couldn't see where it could be since the motel wasn't in operation until after September, 1947. He was referred to his own books (Exhibit 9) which recorded \$2,547.00 in June, \$1,800.00 in July, \$500.00 in August, and none in September, October or November of 1947. Corbett wondered if this could have been from the sale of wood. (R. 1042). Corbett reported on his return for 1947, the expenses of the motels but only \$3,512.47 of income.

The bookkeeper, Murta, testified she received money from Corbett from time to time which he called "store rentals" or "overages." She added some of these amounts to the cash sheets but not always (R. 269-270). Marx testified he examined the cash sheets and found lump sum payments entered as "overages" and "transient rents" in the amount of \$1,465.73 in 1945, \$5,106.25 in 1946 and \$1,886.78 in 1947 (R. 763). The amounts were *deducted* by Holtberg in his computation as *possibly* being money Corbett received from the holdouts of allowances, night rentals, Newton's salary checks or the motel operation (R. 797, 800-802, 804). *In addition to these cash sheet entries*, Holtberg computed additional unreported income of Corbett's half computed on the community property basis, of \$8,734.58 in 1945, \$9,868.20 in 1946 and instead of the joint loss reported by the Corbetts in 1947 of

\$12,472.47, a community share for Corbett of \$3,539.01. Upon this additional income, additional tax was computed to be \$4,120.45 in 1945, \$3,922.59 in 1946 and \$597.15 in 1947 (R. 797-805).

In addition to this evidence used in computing unreported income, the Government produced a great deal of other testimony bearing upon Corbett's operation which certainly reflected strongly upon the intent of Corbett to evade his income tax by concealing this income.

Examination of the cash sheets (Exhibits 10, 11 and 12), showed almost daily use of ink eradicator. (R. 197-201). Upon cross-examination, Clerk Morgan selected sheets containing entries she identified as made by Corbett (Exhibit 11-A). Over three eradications on the sheet of March 27, 1946, totaling \$134.03 of receipts removed and claimed as allowances. Corbett had entered "local phone—25c," "L.D. phone—15c" and "telephone commission—\$7.35" (R. 241-246).

Allowance slips in large amounts were marked "Cash shortage" by Corbett. All clerks testified that there never were any such shortages (R. 213). Murta testified that when she received the cash receipts and the cash sheets, they balanced or had overages. The shortages, if any, would be a few cents or two or three dollars (R. 314, 333). Thereafter, she gave the allow-

ance slips to Corbett, and when she got them back, he had marked "cash short" upon them. These were then entered in the allowance journal and in the "cash over and short" account with the resulting reduction of reported income (R. 334). Murta never made any adjustments returning any allowances, night rental or envelope money to the hotel records, unless it was included in the money given her by Corbett (R. 279-286).

Murta testified she charged the purchase of stamps as an expense of the hotel (R. 272-273). Clerks Morgan and Newton testified that these stamps were sold at the desk and the proceeds kept in the "stamp drawer." On Corbett's instructions, the Corbett children removed the money for their own spending (R. 173-175, 380-382, 391).

Clerk Wright testified Corbett used ink eradiator, made a mistake, tore up the cash sheet and rewrote the sheet omitting entries. He also testified he rented apartments of permanent guests in their absence, to transient guests and omitted these double rentals from the cash sheet (R. 614, 617).

Harry Waldron testified that while he worked as manager of the Pilot Butte Inn in Bend, Oregon, Corbett, and sometimes his daughter, come regularly to the Inn, that they came at night after he went off shift and generally left before he came to work in the

morning. After their visits, Waldron noted cash sheets were altered, house accounts were reduced, reflecting fewer occupancies, the registration cards used as guest billings had been tampered with and duplicate cards used to conceal room rentals. On one occasion he saw the daughter, Peggy Corbett, re-writing a cash sheet. Cash also had been removed to correspond to the altered records (R. 666-667, 676-677).

John Bunch, the accountant who prepared Corbett's 1947 and 1948 tax returns said that in the course of his work he found that duplicate invoices had been submitted to the bookkeeper for bills previously paid and reported as an expense. In 1947 he made 26 adjustments and 81 adjustments in 1948 (R. 722). One adjustment charged back a check in the amount of \$19,765.00 paid to Bill Corbett for such duplicate invoices and another was for \$11,661.00 to Corbett for a duplicate invoice claimed for a bill in 1947. The total of the adjustments in 1948 was \$63,000.00 (R. 722-726).

Newton testified Corbett submitted duplicate cash vouchers to her and received cash after the original voucher had been paid to an employee or a repairman. The entire Corbett family submitted cash register tapes also marked groceries or advertising for which they received cash from the drawer (R. 378-380, 385-386).

Wright stated Corbett entered the cash drawer while he relieved Wright and removed large bills replacing them with small bills or a slip marked "B.C." Corbet said he had a hobby of collecting money (R. 920, 1019).

Agent Marx made a comparison of the allowance slips with the deposit tickets of the various bank accounts of the Corbetts. He compared the deposit tickets of the day following the date of the allowance slips for checks of amounts identical to the allowances. These amounts totaled \$18,000.00 in 1945, 1946 and 1947 from Exhibit 72A, B and C, and approximately \$2,500.00 for the same period from Exhibit 73A, B and C. (R. 770-773).

Marx also computed the currency deposited to the various Corbett accounts *exclusive of the hotel account*. There was \$96,356.81 deposited in these *other* Corbett accounts during 1945, 1946 and 1947 (R. 775). Examination shows very little cash was deposited to the hotel business and petty cash accounts.

Dewey Metzdorf, a hotel operator, testified Corbett told him in 1946 while discussing a proposed sale of the Claremont Hotel, that the hotel was netting \$86,000.00 per year (R. 654-657). Corbett reported \$13,555.73 in 1945 (Exhibit 1) and \$12,359.00 in 1946 (Exhibit 3), from the hotel operation.

Ernest S. Martin testified that Corbett told him during a discussion of the motel operations that he had an *independent method* of laundry other than the commercial laundry to take care of sheets and pillow cases. Corbett said he did the laundry himself so he wouldn't have to report all the income from the motels. That way they couldn't check on his rentals. Also Corbett said he rented rooms more than once a day or a night and wouldn't report this rental. He said he saved one-third to one-half of his income from being reported (R. 640).

Martin testified that on another occasion at the hotel, Corbett showed him ten to fifteen cards which he said were room cards. Corbett said he saved these out every night so he and his son could collect the rentals and not report it. Corbett said it amounted to considerable (R. 642).

Corbett's daughter testifying for her father, on cross-examination, testified she lived at the hotel and at the motel, and that after a washroom was built, *she did the laundry for the motel* (R. 846). There was then a noon recess, and immediately *after* the recess she resumed the stand and on redirect said she meant she did her own laundry (R. 852).

Corbett testified in his own defense and told of his life from birth, exhibiting an excellent memory for

much detail about his life. However, on other matters, he was very evasive, vague and contradictory in his statements where he attempted to coordinate these details with other statements he had made. In the course of the investigation he gave a statement to the agents and also financial statements represented as being his financial position in 1938 and in 1948. These statements conflicted with his testimony on the stand and to statements given to third parties.

Corbett admitted he removed items from the cash sheets because of O.P.A. regulations. He claimed he gave the money back to Murta to enter on the records for tax purposes (R. 899-900). However Exhibit A-8, which he claimed was a list of these items he returned to Murta, was actually a list of transient rents and cash received which had been reported by Murta in the usual course of business and couldn't be the amounts he claimed (R. 1000). When asked, he was unable to find an entry where he put back money from Vowles or the Clerks (R. 1001-1004). After recess he found one entry of \$400.00 marked "*cash shortage.*" This had already been included in Marx's computation (R. 1004-1005).

He offered Exhibit A-7, his application for rental rate adjustment to the O.P.A. as proof of this claim that he manipulated his records because he couldn't get the increase. *However, it was shown on the face of the*

application that the application was stamped "Approved—Sept. 2, 1944" (R. 1006).

Asked what O.P.A. had to do with the approval of an entire bill, Corbett testified:

"A. I would be unable to tell you and I don't think they could either" (R. 1007).

Asked about cash shortages claimed when Murta and the clerks said there were none, Corbett said "*cash shortages*" come from "*overages*" (R. 1019-1020).

Asked about his instructions to Newton that "Frank should divide the money and no one need know," Corbett said he tried and tried to think and he couldn't imagine (R. 1015).

Asked about the duplicate invoices Bunch corrected, Corbett said that the duplicate invoices were submitted by him but were accidental. He couldn't remember duplicate vouchers to Newton (R. 1022-1023).

Asked how checks were shown on the hotel deposit tickets which weren't on the cash sheet, Corbett was evasive and confused and finally said he couldn't explain (R. 1034-1035).

Corbett said he put all income received on the books but \$1,400.00 in 1945, \$2,000.00 in 1946 and \$1,500.00 stolen from the safe in 1947 (R. 1038).

The \$1,400.00 and \$2,000.00 were entered on the 1945 and 1946 tax returns as "wagering." Corbett couldn't say where these amounts came from but was "some kind of cash I obtained some place" (R. 1038-1039).

The \$1,500.00 was "envelope money" stolen from the safe and not made good by the bonding company. This didn't get on the books as income and was taken as a tax deduction in 1947 (Exhibit 5). However, it was shown that in September, 1947, Corbett received a check for \$1,500.00 from the hotel charged as theft loss. So, Corbett personally received the money that was taken as a theft loss on the books and again on the return upon income not even reported in the first place (R. 1039-1041).

Asked if he did not take checks from the motel receipts, run them through the hotel account as hotel income in place of cash he removed and deposited to his other accounts, Corbett said, "I don't know. If the book shows that, that could be" (R. 1037).

Corbett admitted the manipulation of the records and the withdrawals from the hotel funds described by other witnesses. The jury did not believe his explanation when confronted by the testimony of these witnesses. They convicted him of evading his taxes for 1945 and 1946 as charged in Counts 1 and 2.

SUMMARY OF THE ARGUMENT

- A. Evidence clearly established that the defendant intentionally evaded his proper income tax by an elaborate system of concealment.
1. False allowances were claimed for bills of hotel guests that were actually paid by the guests.
 2. Legitimate allowances, if any, were not included in the Government computations.
 3. Defendant's claim that this manipulation was done to comply with O.P.A. regulations was completely disproved.
 4. Rentals by the Night Clerk, Vowles, were omitted from the records and amounted to \$20.00 per night that were given directly to the defendant.
- B. Corbett's claim that while he admitted removing this income for O.P.A. purposes, he returned it to the hotel books and to the hotel bank accounts was disproved.
- C. Defendant obtained the salary checks given to an employee for serving as a corporation "Vice-President", but caused the proceeds to be reported upon her tax return rather than his.
- D. Revenue Agent Marx, in testifying upon comparisons of records and computations of currency deposits and of check deposits violated no rights of the defendant when included were \$497.14 in

checks shown upon duplicate deposit tickets present in the Courtroom but not in evidence.

- E. The computations and testimony of the expert witnesses in summation of the Government case were entirely proper and in no way invaded the function of the jury.
- F. Financial Statements given by the defendant to his banks were properly introduced by the Government as showing contradiction to statements furnished Government agents in the course of the investigation.
- G. The defendant was properly cross-examined for the purposes of impeaching his testimony given in direct examination and for proving his intent to evade his taxes and his knowledge of his true financial position:
 - 1. Upon transactions prior to the indictment period;
 - 2. Upon transactions subsequent to the indictment period.
- H. The defendant had adequate access to exhibits during the course of the trial by delivery of same by a Government agent as agreed.

ARGUMENT

Appellant's brief very cleverly attempts to confuse the issues of this case and the fact that the origi-

nal defense counsel at the trial, Mr. Tracy Griffin, stated in the motion for a new trial that the only question was whether or not the Director of Internal Revenue must under the statute, in addition file a certificate of the claimed amount of tax due or the deficiency involved. Mr. Griffin said (R. 1143):

“I may say that in my analysis of the two weeks’ trial that is the only substantial question worthy of consideration by either Your Honor or an Appellate Court.”

Defense counsel was recognized by the trial court as one of the ablest trial lawyers in the United States and that he made a question of it when there really wasn’t one. Mr. Corbett acknowledged that he was satisfied with that (R. 1153-1154). Neither of the two defense attorneys of the trial are associated with the appeal. The question noted by Mr. Griffin is not now noted in the appeal.

A. Evidence of Tax Evasion By Corbett By False Allowances

1. The Government proved that the records of the hotel operation were falsified through the removal by ink eradicator of cash receipts from the cash sheets, by allowances claimed that were false, by receipts from room rentals that were never entered and by expenses claimed upon duplicate invoices and vouchers that had been paid.

The total allowances taken by the hotel were \$22,579.41 in 1945 and \$29,784.70 in 1946 (R. 783). Of these amounts the Government proved \$14,959.84 in 1945 and \$17,542.83 in 1946 specifically as being false claims for bills that had actually been paid. These amounts were proved by the Clerks Morgan, Krueger and Newton who had separated the ledger sheets and allowance slips they could recognize by entries in their own handwriting. These exhibits were identified in Court and no question raised then as to identification of these exhibits (Exhibits 13, 14 and 15).

Morgan, by reason of her shorter period of employment identified fewer ledger sheets. She testified in detail concerning them. No question is raised by the Appellant concerning these allowances being false. However, appellant questions the identification of Exhibit 15 by Newton and would credit only \$100.00 in 1945 and \$904.39 in 1946 out of the thousands of dollars included in that exhibit. Appellant contends that the segregation was by the agents and that Newton did not identify the exhibit. However, she testified (R. 356-357) that she had examined the cash sheets and guest ledger sheets with Special Agent Holtberg prior to trial and segregated those she could identify by her writing. She identified Exhibit 15 as being those she segregated. Because of the volume she did not testify concerning all of the allowances in the

exhibit but only some particular ones. No question was raised by the defense at the trial, of the other ledger sheets and allowances contained in the exhibit. Appellant's alleged claim of confusion concerning the first sheet not being an allowance in her handwriting is best met by setting forth her entire answer (R. 357):

“Q. Now would you show by example there, please, to the jury and the Court how you determined that those were your entries?

“A. Well, under the line where it says cash, it has been erased but you can read \$50.43 which is in my handwriting, and underneath it there is a \$50.43 which is on the allowance line. That is not my handwriting.”

The entry in her handwriting, in the cash column which had been erased, showed that she had received payment of the bill taken as an allowance. While some of the sheets in Exhibit 15 may have contained a proper entry, each sheet contained an improper allowance shown by an erasure, an attached allowance, an original ledger sheet or a check given in payment. Only these improper allowances were included in the Government computation (R. 357-362). Newton testified there were other ledger sheets she couldn't identify but which were false because the balance brought forward by the night clerk reflected a payment or the erasures were so heavy the “cash” entry was not iden-

tifiable (R. 363). These were not included in Exhibit 15.

Special Agent McCarthy identified some of those guest ledger sheets for which allowances were taken and these were included in the Government's proof.

2. LEGITIMATE ALLOWANCES CLAIMED

The defendant claimed that allowances were given to employees and special guests. He claimed he had 37 clerks in 1945-1947 and allowances of \$1,000.00 per month to employees who lived at the hotel. He employed three clerks a day — morning shift, swing shift and night shift. However, it was proved that Vowles was night clerk from February, 1945 to December, 1947 and he didn't live in the hotel. Similarly, Newton worked from June, 1945 to May, 1948 and she didn't live in the hotel. Morgan was there from October, 1945 to May, 1946 and she didn't live in the hotel. Wright was there from October, 1946 to September, 1947. Krueger was there from June, 1945 for six weeks and the year of 1947. Corbett had nothing but his memory to back up his claim and only one shift from May, 1946 to October, 1946 is not accounted for. Marx testified he found only two employees who received allowances (R. 787-788). The transcripts were never produced by the defendant to show if the rentals to any

employees were even charged to the books. The transcripts were never furnished to the agents.

3. DEFENDANT'S CLAIM OF MANIPULATION TO COMPLY WITH O.P.A. REGULATIONS

Defendant admitted the alterations of the records and withdrawal of the cash but said he did it to avoid complaints from O.P.A. regulations (R. 900). He admitted that he instructed clerks to remove large sums from rooms showing more than O.P.A. rates by ink eradicator and to enter other receipts on the cash sheet (R. 912). He offered his applications for rent adjustment (Exhibit A-7) as proof of his claim of alterations in 1945, 1946 and 1947. He said he went ahead and charged more because his rate increase hadn't been approved. *Exhibit A-7 was stamped on its face "Approved Sept. 2, 1944."*

He was unable to answer what removing an *entire bill* had to do with O.P.A. regulations limiting his rental rates (R. 1007).

Newton testified the O.P.A. had nothing to do with allowances but that allowances were given for the entire bill at Corbett's instruction (R. 478-482).

4. NIGHT RENTALS BY VOWLES

Vowles testified he rented rooms held out for him

by other clerks which he did not enter on the cash sheets. He also rented cots on the balcony to servicemen. He said he put the money in the cash drawer or in an envelope marked "B.C." (R. 605). He said he did it every night from February, 1945 to the fall of 1947, except for one trip made by Corbett in 1945 and one in 1946 (R. 607). Vowles said he rented from one to seventeen rooms every night and averaged five to six rooms a night. He said these receipts averaged \$20.00 to \$30.00 per night (R. 610). In addition he rented fifteen cots to servicemen for \$1.00 each (R. 609). All of these receipts were omitted from the cash sheets and given to Corbett (R. 609). Morgan, Newton and Wright all confirmed this method of concealing receipts. Vowles said he kept a record of these rentals at home and that he no longer had that record. He said it was over \$7,200.00 (R. 611). He did not testify that he put all of these concealed night rentals upon his personal record and could not remember the dates he kept the records. He remembered the amount only as over \$7,200.00. The Government used the minimum figure given as his average, of \$20.00 per night. This is substantiated by the testimony of the other clerks who all saw these receipts given to Corbett by overages or envelopes. It is also substantiated by *Corbett's statement to Ernest Martin*. Corbett showed Martin 10 to 15 room cards he said he held out from

the clerks so that he and his son could rent them and not report these rentals. *Corbett told Martin that it amounts to considerable.*

B. Corbett's Claim of Returning This Money to the Books

Corbett said he gave this to Murta in lump sums to be put on the books (R. 905, 916, 1000). Murta said from time to time she received money from Corbett which he called "overages" or "store rentals." Sometimes she put it on the cash sheet (R. 269-270). Marx computed this to be \$1,465.73 in 1945, \$5,106.25 in 1946 and \$1,886.78 in 1947. Appellant now contends that there was an extra \$200.00 restored to the cash sheet in 1945 and \$410.00 entered to the cash journal. No testimony was given by Murta of entering any such money from Corbett on the cash journal and there is nothing to support Appellant's contention. In any event, the \$600.00 would not materially affect the position taken by the Government, since the amount shown by the Government to have been taken by Corbett is \$17,469.15 over the \$1,465.73 computed by Marx.

It is not possible to believe that all of the money taken from the cash drawer under the pretense of allowances as shown by the altered ledger sheets and the testimony of the witnesses can be covered by

\$1,465.73 or \$2,000.00 in 1945 or the \$5,106.25 in 1946 which appellant does not question.

C. Newton's Salary Checks

Newton testified she received checks for acting as "Vice-President" of the Claremont Hotel within one month of going to work there as a clerk (R. 382-384). She said she signed them all over to Corbett without receiving any proceeds from them. Tax was withheld from the gross amount she received as "Vice-President" and she reported these checks on her return. She received a tax refund on her return which might have included part of the tax withheld on the checks. The checks in the amount of \$295.04 went to Corbett.

The Government proved beyond a reasonable doubt Corbett evaded taxes upon unreported income of \$8,734.57 in 1945 and \$9,868.29 in 1946 over and above the money given to Murta and entered upon the hotel books. The \$1,400.00 listed as wagering in 1945 and of \$2,000.00 in 1946 were not identified by Corbett as from any source and so could not be the amounts included in the Government computations. The accountant who included these amounts on the tax returns said Corbett was vague in describing it (R. 684), and Corbett on the stand said he didn't know where it came from (R. 1038-1039).

D. *Testimony of Marx to Conclusions from Records Not in Evidence*

Revenue Agent Marx made two computations from the deposit tickets of the various Corbett bank accounts. In one instant he compared the *allowance slips in evidence* to the deposit tickets of the following day. The allowance slips were attached to the ledger sheets admitted as Exhibits 72A, B and C and 73A, B and C (R. 766-768), and were compared with the deposit tickets for deposits of checks of corresponding amounts (R. 766).

The Corbetts had accounts in three different banks and in different branches of these banks, and the accounts were in the names of Bill or Gertrude Corbett, Claremont Hotel, Claremont Hotel Change Account, Claremont Hotel Petty Cash Account, and the Corbett Construction Company. Some records, including deposit tickets, of these accounts were introduced by the bank representative into evidence at the trial. The deposit tickets for 1945 for one bank were declared to have been destroyed by that bank. This was testified by the bank official.

In the course of the investigation, Mr. Corbett made available to the agents, McCarthy and Marx, certain of his records. This was done at the hotel at their request. In due course some records were put in

the possession of the agents where they remained throughout the trial (R. 69-71). The records were for the years 1945, 1946 and 1947. No records for the year 1948 were obtained (R. 98). These records remained available at all times to the defendant or his representatives both prior to and during the trial. During the trial all records not introduced into evidence were in the Courtroom in large boxes at counsel table and available for reference of all parties (R. 99). The records received were listed in an exhibit offered but not admitted (Exhibit 9A), a copy of a receipt given Mr. Corbett upon receipt of the records by McCarthy (R. 71, 97). These records included among other records not admitted, 26 books of duplicate deposit tickets (R. 71, 98, 99). *The records were voluminous but all records in the possession of the Government and not put into evidence were in the Courtroom throughout the trial to the knowledge of the defendant.*

Marx testified he *compared the allowance slips in evidence with the deposit tickets of the various accounts of the Corbetts* (R. 766). He testified in detail at Defense Counsel's insistence, as to each allowance ticket in Exhibit 73A which corresponded to a check of equal amount deposited to the Claremont Hotel Account in the Bank of California, giving name, room number, date, amount and bank identification number

in the year 1945. There were 47 items so detailed, totaling \$1,988.88 (R. 767,771).

At that time, defense counsel, Mr. Tracy Griffin said (R. 771):

“As far as I am concerned on this as long as the deposit is to the bank account if he wants to take the totals rather than the detail it is all right with me now.”

Thereafter Marx gave the totals of such allowances compared to corresponding checks deposited to the various banks. Included in the testimony was \$497.14 deposited to the National Bank of Commerce (R. 771).

The records of the *Claremont Hotel Account* of the National Bank of Commerce were introduced into evidence (Exhibits 28 and 29). The duplicate deposit tickets to the *Claremont Hotel Change Account* at the National Bank of Commerce were not introduced into evidence for the years 1945 and 1946. However these duplicate deposit tickets to the *Change Account* were included in the records present in the Courtroom throughout the trial. Later these *two* hotel accounts were transferred to the Peoples National Bank and these records were introduced (Exhibits 34, 35, 36 and 37). The *Change Account* was called the *Petty Cash Account* when transferred to the Peoples National Bank.

There was no cross-examination or further detail requested upon that portion of Marx's testimony (R. 771) but the duplicate deposit tickets were included in Exhibit 9A (the proffered receipt offered but not admitted) in the 26 books of duplicate tickets, and were the basis of the figures to which Marx testified.

Similarly, the duplicate deposit tickets of the tickets destroyed by the bank for the year 1945 were included in those books received by the agent from the defendant. The groundwork had been laid by Mr. Hobart (R. 132) for the introduction of secondary evidence, but as no objection was made as to the manner in which Marx testified of the work he performed, nothing further was introduced into a trial already having a voluminous list of exhibits.

Marx testified from his work papers as was clear to everyone at the trial, including the defense counsel, of work he performed. As the details were great and confusing, only his totals were given. Had there been any question, inquiry could have been made by counsel. Counsel for Appellant now would question the testimony of Marx for authenticity because the allowances identified by Marx as totaling \$497.14 of deposits to the National Bank of Commerce, do not correspond to the National Bank of Commerce account in evidence. Because of the summaries given by Marx, it is

not clear on the record as to which account he was referring. However, it was to other deposit tickets present in the courtroom that his comparison was made. Appellant raises no question of the 47 allowances set forth in detail which are substantiated in the evidence. They would question now the manner in which this evidence was introduced — and to which defense counsel agreed — because similar detail was not set forth.

The second computation by Marx of the deposit tickets was a computation of currency deposited to accounts *other than* the hotel accounts. This computation *was* from *deposit tickets in evidence* as contrasted to the other comparison of *allowance slips in evidence*. As defense counsel requested (R. 774), it was specified that this was a computation by Marx of currency deposited to these accounts from the deposit tickets in evidence (Exhibits 22, 20 and 14). This total was \$96,356.81 during the years 1945, 1946 and 1947 (R. 775). This testimony was also given by Marx from his work papers as was clear to all in the courtroom.

This was an entirely proper method of proceeding. Where records are voluminous and are not in themselves readily understandable by the jury, summaries made according to a method which offers reasonable guaranty of accuracy are admissible, if the

records are available for the purpose of cross-examination and the accuracy of the summary can be checked. This had been held in *Stevens v. United States*, 206 F. (2d) 64, 67; *Augustine v. Bowles*, 149 F. (2d), 93, 96, 97; *United States v. Mortimer*, 118 F. (2d), 266, 269; *Cooper v. United States*, 9 F. (2d), 216, 223.

There could be no basis for prejudice to the defendant in the testimony even if the record is not clear as to the detail of Marx's comparisons, since the records were in the courtroom, cross-examination was available to the testimony of Marx and, finally, as shown by the defendant's own testimony, he was asked about Exhibits 73A, B and C and the allowance slips for which there was a corresponding check deposited. The defendant granted that this happened and said (R. 1035-1036):

"A. I am talking about the checks you have, the Johnston checks, I believe that is called, but on the others I am sure that Mr. Marx knew what he was talking about * * *"

E. Computation and Testimony of Agent in Summary of Government's Case

As its last witness, the Government called Everett D. Holtberg, a special agent, who qualified as an expert witness in the field of accounting. He had been present in the courtroom throughout the trial (R. 793).

He stated he had made a computation from the evidence introduced in the court, of the net income and tax due thereon, for the years 1945, 1946 and 1947. These computations were shown in Exhibit 74, and the exhibit had been duplicated by carbons for the purpose of demonstration to the jury in order that they might follow the witness' testimony. It was subsequently admitted (R. 825). In identification of the exhibit, Holtberg stated that his computation was from the documents and testimony in evidence. He stated that he began with the tax returns of Corbett for the years 1945, 1946 and 1947. He then added amounts of additional income based upon the documents in evidence and subtracted from that an amount for portions of this income recorded on the books to arrive at a total additional net income. He then took Corbett's community half, which was added to the income shown upon the return and computed the tax upon that net income (R. 794).

The exhibit had been offered, and the defense had objected on the ground that it was incompetent, irrelevant and immaterial (R. 793) after which the above identification was made. When asked if there were any further objection, defense counsel stated the explanation was too broad to determine the basis upon which he made his computations (R. 795). The court ruled that it would have to be developed by more de-

tailed examination of the witness but that the copies of Exhibit 74 might be passed to the jury in order that they might more intelligently follow the testimony of the witness. The exhibit was not then admitted but the court instructed the jury it was to be used for the purpose of following the figures and computations the witness gave but that "*the weight and value of this of course will be for your determination when you have heard all the evidence.*" (R. 795).

Holtberg then testified upon his computation which had been set out upon the exhibit and the carbon copies used by the jury. In each computation for the years 1945, 1946 and 1947, he began with the information taken from the tax return filed by the taxpayer (Exhibits 1, 3 and 5).

To this, for the year 1945, he added the unreported room rental income of \$20 per day for 184 days or \$3,680. He testified that this figure was Marx's computation from Vowles' testimony. He said nothing further (R. 796). He also added salary from the Claremont Hotel Corp. to Loretta Newton given to Bill Corbett less the withholding tax as testified to by Marx, in the amount of \$295.04. He then added "allowances Claremont Apartment Hotel restored to rental income, total for the year 1945 of \$14,959.84." He stated this was from Exhibits 13, 14, 15, 16, 17,

46, 49, 51, 73, 55, 60 and 72 (R. 797). He then deducted "the unidentified cash overages and transient room rentals restored to income on the books" as Mr. Marx computed and testified in the amount of \$1,465.73. From this computation of net income he computed the tax on a community property basis.

He then computed the net income and tax due for 1946 in the same manner, identifying room rentals from the testimony of Vowles and Marx and the allowances from the same exhibits, with the same deduction of Marx's computation of cash restored to the record. He testified he deducted this cash added to the records because it was unidentified and could be part of the allowances and room rentals added as additional income (R. 800-802).

Similarly, he computed the net income and tax due for 1947, with the same identification of room rentals and allowances (R. 804). He also added unrecorded Corbett Motel receipts of \$12,337.43 identified as being from Exhibit 65, the record introduced by Mr. Birkeland and Mr. Marx's testimony (R. 804).

That was his entire testimony upon direct. The exhibits used for allowances had all been identified as unreported by the clerks, Newton, Krueger and Morgan and by McCarthy. The ledger sheets and allowance slips were in evidence and the manner in

which they were included showed on the exhibits themselves. The erasures, the changes from cash to allowance, the checks proving payment, the irregularities in the daily balance where no entry was made at all—all this had been testified to by witnesses, and with the explanation of the witnesses these facts were self-evident upon the exhibits upon examination. Holtberg simply *computed the totals of these exhibits by years without comment of any kind.*

Similarly, he included the computations of Marx as to rentals not recorded by Vowles, without comment. Similarly, he included the salary checks of Newton, which she said she gave to Corbett, reduced by the tax withheld as testified by Marx. He also included Marx's computation of the Motel rental based upon Exhibit 65, the record proved by Birkeland. In no way did he comment upon any of the evidence or evaluate the testimony of any witness.

Upon cross-examination, he was asked if he had not proceeded upon the basis that none of these allowances were legitimate and he answered yes (R. 808). He was then asked if he investigated to determine how many employees lived at the hotel and he answered no. He was then asked that if any of the allowances were legitimate, they would not then reduce his computation. He answered if any were in the ex-

hibits in evidence that he used in his computation they would (R. 809). He also testified that any additional cash restored to the books and not included by him, if any, would also reduce his computation. Similarly, he testified that if the room rentals were not made as testified by Vowles, his computation would be less. He answered also that if the figures he used were eliminated there would be no additional tax (R. 812). He stated also that he ascertained the allowances for 1946 taken from the exhibits had been used in the allowance journal.

Also on cross-examination, he stated he used Marx's computation for the Corbett Motel income for 1947, and upon further questioning he explained Marx's computation showing the exhibits from which it was made (R. 813-816).

On cross-examination Holtberg was asked for the percentage of the indictment figure the Government had proved in the court (R. 805-806). On redirect he was asked to compare the total allowances taken by the hotel records to the allowances he had included from the exhibits. He was then asked if allowances to employees in any way affected the allowances he used in his computation. Holtberg stated that they might be in the difference between the total allowances taken and the figure he used. He stated allowances to

employees did not affect his allowance figure (R. 820-821).

Holtberg stated that he did not include any allowances he knew to be given to employees. This is not usurping any jury function—the exhibits had been identified by other witnesses and none had said that any of the exhibits included any allowances given to employees. Holtberg, not being the agent who investigated the case, and testifying in summation of his computation, knew of no such allowances and so stated.

This would be identical to the ruling expressed by the United States Supreme Court in *Friedberg v. United States*, 348 U.S. 142, 145, when it was determined that an agent summarizing on redirect evidence introduced at trial upon a negative fact, was not a conclusion of the witness nor invading the province of the jury.

Similarly, Holtberg identified the use of computations made by Marx. Marx computed the nightly room rental by specific numbers of days for each year at the minimum rate given by Vowles. He did nothing further. Vowles had testified to his practice of rentals and estimated the amounts collected daily which he omitted from the records. Marx computed these amounts as he explained and Holtberg used Marx's computation in his own computation.

Holtberg's computations were shown by schedule. This is entirely proper and approved by the courts in complex cases in order that intelligent summaries and computations may be made for the jury. The courts require proper admonition to the jury upon the use of these schedules. The Court fully met the requirements in admonishing the jury that Marx's computation was not evidence when it was given (R. 774, 776, 777, 779) as well as before Holtberg's testimony (R. 795). The court properly instructed the jury concerning the testimony of experts and the use of such schedules in the instructions that he gave (R. 1124-1125, 1128-1129).

The requirements set forth by the Supreme Court for testimony of an expert *from the evidence* and not by hypothesis were met. *United States v. Johnson*, 319 U.S. 503, 519, 63 S.Ct. 1233, 1241, 87 L. Ed. 1546. The court there approved this method and emphatically stated that this did not usurp any function of the jury. This rule has been applied in *Beatty v. United States*, 203 F. (2d) 652, 655; *United States v. Cantor*, 217 F. (2d) 536, 537, and by the Court of Appeals for the Ninth Circuit in *Barcott v. United States*, 169 F. (2d) 929, 931; *Gendelman v. United States*, 191 F. (2d) 993, 996; *Remmer v. United States*, 205 F. (2d) 277, 289, and *Bateman v. United States*, 212 F. (2d) 61, 68.

F. Financial Statements Submitted to Banks

In the course of the investigation, the defendant submitted to the Internal Revenue Service statements that purported to set forth his financial position upon his arrival at Tacoma in 1938, and also his position in 1948. These were mailed by the defendant with an explanatory letter that the statement of 1938 was made by the defendant from memory of transactions which were never recorded (R. 741-742). His letter indicated he had no bookkeeping training, that he reconstructed this statement faithfully and while there may be something he missed, "such oversight is completely unintentional" (R. 743). This statement itemized assets, including cash, cashiers' checks, old coins, money given by his mother as gifts to his children but retained by the defendant, accounts receivable, loans, real properties, cars and trailers, and money left with his parents, all totaling \$112,950, with the gifts to children being shown as \$2,000 worth of liabilities (Exhibit 71, R. 741-745).

The financial statement for December 31, 1948, was represented as prepared by an accounting firm and showed *total assets* of \$1,178,352, and *corresponding liabilities* which reduced his net worth to *only* \$28,021.56 (R. 745-746).

His statements to the Internal Revenue agents of his

financial picture would then support the tax returns he submitted. The Government then offered financial statements given to his banks during the indictment period (Exhibits 27, 31, 38).

These statements to the banks were offered to show the contradictions with the statements to the investigators. They were also offered to show his knowledge of his true financial position and increase in net worth and to show his intent in submitting false statements to the agents and false tax returns (R. 740-741). The court admitted the statements, and the total assets and liabilities of these bank statements were read (R. 746). The bank statements conflicted strongly with the statements to the agents (Exhibits 27, 31, 38 and 71) both in the valuation of assets and particularly in the liabilities detailed in the statement to the agents.

The court instructed that these financial statements should be considered for two purposes only: (1) conflict with statements to the agents, if any, as bearing upon credibility and intent of the defendant in his failure, if any, of reporting income on his returns; (2) knowledge of the defendant's true financial position and of his bookkeeping methods employed for tax purposes. The court instructed the statements should be considered for intent, if any, to conceal in-

come but were not proof of any unreported income (R. 1123-1124).

The United States Supreme Court has ruled that the investigating agencies must explore leads furnished by the taxpayer in *Holland v. United States*, 348 U.S. 121, 127. While this ruling was made in the discussion of the "net worth" method of proof of tax evasion, certainly the Government could not ignore proof explaining any tax deficiency, whatever the subsequent method of proof employed by the Government at trial might be.

Appellant contends that the defense made "basic objection" that the *corpus delicti* had not been established by the net worth method, and so these statements were inadmissible. This must be without weight, as the *corpus delicti* is the proof of the elements of tax evasion, not a method employed. There has been no requirement that such statements be used only in "net worth" cases. The courts have recognized that the Government may proceed by two or more methods of proof of tax evasion in a trial and have sustained conviction even if the net worth method were weak where one method was adequate. *Canton v. United States*, 226 F. (2d) 313, 323.

The Circuit Court of Appeals for the Fourth Circuit directly ruled upon the question here raised by the

appellant in *Beatty v. United States*, 220 F. (2d) 681. In this case the Government introduced two statements given by the defendant to a third party as evidence of his financial position in connection with the purchase of merchandise. These statements were used in the trial to show net taxable income greater than that disclosed upon his returns for the years in question. The defendant contended they were without probative value because the Government did not prove the values shown or make a full net worth method of proof. The court commented upon the recent Supreme Court cases and said that defendant's point might have merit if the Government had proceeded upon the net worth method. However, the Government had shown specific items of omitted income and the financial statements were corroborating evidence of his failure to report all of his income.

That would correspond to the present facts of corroborative statements to the specific items of omitted income, but the statements given by Corbett to the banks would also be properly admissible as statements contradictory to those given the agents in the course of investigation.

G. Cross-Examination of Defendant

1. UPON PRIOR TRANSACTIONS

In the course of investigation, the defendant gave a statement to McCarthy in addition to the financial statements. The testimony of the defendant on direct examination conflicted with the statement to McCarthy, to the financial statements, and to tax returns filed in earlier years.

On direct examination Corbett testified he had no bookkeeping training and no experience in operating rental property prior to acquiring the hotel (R. 863, 865). Cross-examination was then conducted on the basis of his returns for the years 1940 through 1943 (Exhibits 75, 76, 77, 78). These returns were shown to have been *made out by him* and *included detailed expenses of considerable rental properties* (R. 949-963). They showed an increase in realty holdings from two in 1940 to twelve in 1943, although all were shown to be of low value with little return of income. The returns showed during this period that he had paid no tax until 1943 when he paid \$101.40.

The financial statements to the agents claimed a net worth of \$110,950 as of 1938. On direct examination, he testified he came to Tacoma in 1938, and that he "had a little money" and purchased real estate and went into the real estate business (R. 863). On cross-

examination, he was asked if the statement to McCarthy was correct and Corbett stated that "at that time and now" it was correct. He was questioned on the details of this statement of his financial position in 1938 (R. 968).

The statement showed assets on hand or claimed back in 1919 or 1920. Therefore, his petition of bankruptcy in 1925 was offered (Exhibit 79, R. 970). He first did not acknowledge it but later did when confronted with his statement to McCarthy. He was asked if he signed the statement on the petition showing his sole assets to be tools of the value of \$50. He answered he did and that it was correct. He was then asked why assets claimed to have existed from 1919 through 1938, as shown on the statement to McCarthy, were not included on the bankruptcy petition if they were both correct (R. 973-978). His answers were evasive, rambling and amazing in substance as he depicted his early years in sustaining his position that all of his statements were correct. It was during this explanation that the lawsuits were interjected by one of his answers and he subsequently stated he had won 58 out of 63 in the State of Washington (R. 978).

2. CROSS-EXAMINATION OF DEFENDANT UPON SUBSEQUENT TRANSACTIONS

Upon direct examination, defendant Corbett de-

scribed himself as a "substantial trader" with substantial business deals *up to the present time* (R. 931). He described the *sales after the indictment period* of various properties he held during the indictment period, including the Claremont Hotel and the motels (R. 934-937). *He testified on direct* that the Government received \$200,000 in taxes from the trade of the hotel and motels (R. 935). He testified he sold these places at a profit. It was then brought out on cross-examination that this representation of payment of \$200,000 in taxes was to be paid over a forty-year period and that although the sale was in 1951, at a profit, he had not paid any income tax *since 1946* (R. 992-993).

It is entirely proper to go into prior and subsequent transactions from which the intent of the defendant to evade his taxes may be inferred. It is further proper to impeach his statements on direct examination by contradictory statements given at other occasions. *Bateman v. United States*, 212 F. (2d) 61, 66; *Hanson v. United States*, 186 F. (2d) 61, 66.

The best proof that none of this evidence introduced in the Government's case or inquired into on cross-examination was prejudicial or invaded the province of the jury was that the jury deliberated for over eight hours and then returned a verdict convict-

ing the defendant of evading his taxes for the years 1945 and 1946 but acquitting him for the year 1947.

H. Defendant Denied Use of Exhibits Over a Weekend in Course of the Trial

Appellant contends by affidavit of trial counsel that the defendant was unable to prepare the defense in course of trial because he was denied access to the exhibits by the Government. On Friday, December 10, 1954, defense counsel requested permission to withdraw Exhibits 9 and A-1 and take them from Tacoma to Seattle. Counsel for Government also requested access to these exhibits during the weekend. Defense counsel wanted to take the exhibits to Seattle so he would not have to come back to Tacoma. The court suggested defendant set a definite time and an Assistant of the United States Attorney's office would take them to Seattle for defendant's accommodation. Further discussion was held and the Court authorized removal of the exhibits under a plan mutually agreeable to both sides. It was agreed that Marx would deliver Exhibits 9 and A-1 to defense counsel in Seattle about 3:00 o'clock Saturday afternoon (R. 703-705). The Government used the exhibits Saturday morning in preparing for final computations of the agents. They were then delivered by Marx to Mr. Griffin's office in Seattle at about 2:00 o'clock Saturday after-

noon. (See affidavit of Marx in answer to affidavit of Mr. Griffin.) Defense had the exhibits from that time until trial reconvened at 1:15 P.M. Monday afternoon, when they were returned to the clerk. The Government did not rest till 11:00 A.M. Tuesday. Defense had access to these records until they began their defense on Tuesday afternoon. Murta testified she used these records over the weekend in her appearance as a witness for the defense Tuesday afternoon (R. 854). Corbett testified he used the exhibits himself (R. 902). Nowhere in the trial is there a claim that the defense did not have time to prepare its case. Rather it appears that the defense witnesses had equal opportunity with the Government to make full use of the records.

CONCLUSION

The appellee respectfully submits that the appellant was convicted upon substantial evidence, was not prejudiced by any occurrence at the trial, including all rulings and instructions given by the trial court. The judgment of the court below should be sustained.

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